



1       Witnesses were sworn and testified. Exhibits were examined.  
2 From testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

4                               FINDINGS OF FACT

5                               I

6       Respondent, pursuant to RCW 43.21B.260, has filed with this  
7 Hearings Board a certified copy of its Regulation I containing  
8 respondent's regulations and amendments thereto. Official notice  
9 thereof is hereby taken.

10                              II

11       On May 31, 1977 the M/S HALO moored at Everett, Washington  
12 emitted black smoke of a shade equivalent to Nos. 2 to 2-1/2 on the  
13 Ringelmann Chart, for a duration of twenty-three consecutive minutes.  
14 This emission was observed and recorded by respondent's inspector,  
15 who brought the emission to the attention of the ship's crew approximately  
16 one half hour after the emission began. Although the respondent's  
17 inspector issued a Notice of Violation at that time, the emission  
18 continued during and after the inspector's visit. A Notice and Order of  
19 Civil Penalty, No. 3346, in the amount of \$250 was subsequently issued to  
20 appellant. From this penalty, appellant appeals.

21                              III

22       There was no attempt by either the ship, nor its agent Japan  
23 Line (U.S.A.) Limited, to notify respondent of the emission, prior to  
24 the arrival of respondent's inspector. Japan Line (U.S.A.) Limited  
25 was aware of respondent's regulations prohibiting certain smoke emissions  
26 (Section 9.03(b)) and providing for an exception if respondent is

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 immediately notified of emissions caused by an unforeseeable failure  
2 or breakdown (Section 9.16).

3 IV

4 Any Conclusion of Law hereinafter recited which should be deemed  
5 a Finding of Fact is hereby adopted as such.

6 From these Findings the Pollution Control Hearings Board comes  
7 to these

8 CONCLUSIONS OF LAW

9 I

10 In emitting an air contaminant, smoke, for more than three  
11 minutes in any one hour which contaminant is of a shade darker than  
12 that designated on the Ringelmann Chart as No. 1 (20% density), appellant  
13 violated Section 9.03(b) of respondent's Regulation I.

14 II

15 Appellant's seeks to invoke the exception provision of  
16 Section 9.16 of respondent's Regulation I which states as follows:

17 Emissions exceeding any of the limits  
18 established by this Regulation as a direct  
19 result of start-ups, periodic shutdown, or  
20 unavoidable and unforeseeable failure or  
21 breakdown, or unavoidable and unforeseeable  
upset or breakdown of process equipment or  
control apparatus, shall not be deemed in  
violation provided the following requirements  
are met:

22 (1) The owner or operator of such process  
23 or equipment shall immediately notify the Agency  
24 of such occurrence, together with the pertinent  
25 facts relating thereto regarding nature of  
problem as well as time, date, duration and  
anticipated influence on emissions from the  
source.

6 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
27 AND ORDER

1 (2) The owner or operator shall, upon the  
2 request of the Control Officer, submit a full  
3 report including the known causes and the  
preventive measures to be taken to minimize  
or eliminate a re-occurrence.

4 Appellant did not notify respondent of the emission in  
5 question until respondent's inspector came on board ship and notified  
6 appellant. The rapid arrival of respondent's inspector may not deprive  
7 an appellant of Section 9.16 if there has been a bona fide good faith  
8 attempt on the part of the appellant to notify respondent prior to and  
9 independent of the inspector's appearance. Here, however, the emission  
10 continued for at least 23 minutes (20 minutes beyond the allowable  
11 maximum) without any attempt by appellant to notify respondent. Likewise  
12 there is no convincing evidence that members of the ship's crew were  
13 cognizant of Section 9.16 nor that any plan had been prepared between  
14 the ship and its agent, Japan Line (U.S.A.) Limited, to effect the  
15 immediate notice required by that Section. Under these circumstances  
16 the provisions of Section 9.16 are not available to exculpate the  
17 appellant.

### 18 III

19 Appellant seeks an abatement of the penalty citing Kerr  
20 Steamship Co., Inc. v. PSAPCA, PCHE No. 477. In that case the  
21 maximum penalty of \$250 was assessed. This Hearings Board  
22 suspended one half of that penalty upon the findings that  
23 a) the smoke emission in question was of seven minutes duration  
24 and b) was halted, by stopping the ship's engine, immediately upon  
25 notice to the crew by the inspector. Here, by contrast, the emission  
26 was of 23 minutes duration, and was allowed to continue after the

1 inspector served a written Notice of Violation upon the ship's crew.  
2 These circumstances do not justify the penalty abatement granted in  
3 Kerr.

4 IV

5 Any Finding of Fact which should be deemed a Conclusion of  
6 Law is hereby adopted as such.

7 From these Conclusions the Pollution Control Hearings Board  
8 makes this

9 ORDER

10 The \$250 civil penalty appealed from, and imposed by Notice and  
11 Order of Civil Penalty No. 3346, is hereby affirmed.

12 DONE at Lacey, Washington, this 18<sup>th</sup> day of October, 1977.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith  
15 CHRIS SMITH, Member

16 Dave J. Mooney  
17 DAVE J. MOONEY, Member

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25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER